ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 18 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Review of the Commission's Regulations	)	MM Docket No. 91-221
Governing Television Broadcasting	)	

To: The Commission

PETITION FOR RECONSIDERATION

Clear Channel Communications, Inc. ("Clear Channel") hereby submits its Petition for Reconsideration of the Commission's *Report and Order*, released August 6, 1999, in the above-captioned proceeding. Specifically, Clear Channel requests that the Commission modify the manner in which it determines compliance with the "eight voice" standard established by its new television duopoly rule.

In the *Report and Order*, the Commission relaxed its television duopoly rule to permit the common ownership of two television stations in the same Designated Market Area ("DMA") if eight independently owned and operated full-power television stations will remain in the DMA and at least one of the stations proposed to be commonly owned is not among the top four stations in the market based on audience share. *Report and Order* at ¶ 59. This new standard, according to the Commission, is intended to ensure that "markets remain sufficiently diverse and competitive at the local level so that common ownership of two television stations . . . does not threaten our core diversity concerns." *Id.* at ¶ 70.

The Commission, however, has determined, without sufficient explanation, that only those independently owned and operated television stations located in the DMA may be counted as "voices." By failing to count stations outside of the DMA that garner a reportable ratings share, the Commission has artificially restricted its consideration of the legitimate viewing options that are available to audiences in certain areas. For example, assume that Station A, located in DMA B, has a reportable, perhaps even significant, ratings share in adjacent DMA C. Under the new duopoly rule, a licensee seeking to acquire a second television station in DMA C may not count Station A as a separate voice. Thus, if DMA C is a smaller market with only eight independent voices, the licensee will be prevented from acquiring the second station, even though Station A has significant viewership in the market. This "hypothetical" situation actually exists in the Providence, Rhode Island DMA, where five television stations located in the Boston, Massachusetts DMA, have reportable shares that are equal to, or higher than, some Providence stations. Source: Nielsen Station Index, July 1999 Sunday-Saturday 9A-12M, DMA Households.

The Commission's strict adherence to DMA boundaries when counting voices in the context of the television duopoly rule stands in sharp contrast to its announced standard for the radio-television cross-ownership rule, which also depends on the number of independently owned media voices that will remain in the market following a proposed transaction. *See Report and Order* at ¶¶ 107-110. In this context, the Commission has declared that independent voices include, *inter alia*, independently owned and operated television stations, calculated as noted above, independently owned and operated radio stations licensed to a community within the radio metro market in which the television station's community of license is located, and *radio stations licensed to a community outside the radio metro market that have a reportable share in the metro market*. *Id.* at ¶ 111 (emphasis added).

As with the television duopoly rule, the Commission's radio-television cross-ownership rule is based on the number of independent voices in the market because the Commission believes that such a standard "more accurately reflects the actual level of diversity and competition." *Id.* at ¶ 107. Yet, here, in contrast to the television duopoly rule, the Commission considers as independent voices those stations located outside of its specified geographic area, *i.e.*, the radio metro market, that have a reportable share within it. The Commission does this because "stations outside the radio metro market may . . . be presumed to be available to all residents of the radio metro market if Arbitron . . . lists them as having a reportable audience share." *Id.* at ¶ 112. The clear implication is that, if a station has a reportable share in the radio metro market, it is a legitimate media choice for residents in the market and may, therefore, be considered an independent voice. There is no reason why this same presumption should not be applied to television stations located outside the DMA that have a reportable audience share in the DMA.

Clear Channel, therefore, requests that the Commission modify the "eight voice" standard established by its television duopoly rule to include as independent voices those television stations located outside the DMA that have a reportable share in the DMA. This modification merely recognizes that, just as radio stations located in one metro market may fairly be considered a "voice" in another by providing a media choice to listeners—a conclusion that the Commission has already drawn—television stations in one DMA with reportable audience shares in another provide viewing options to those television households and should, therefore, be counted as "voices" in that DMA. Moreover, this modification would not radically alter the Commission's television duopoly standard, since it likely would affect voice counts only in certain geographically proximate metropolitan areas in the Northeast.

In short, Clear Channel requests a narrow, specific modification of the Commission's rule that in no way harms the Commission's interest in promoting competition and diversity. As an alternative, if the Commission is unwilling to modify its rule, Clear Channel requests that the Commission favorably entertain requests for waiver of the rule where such a waiver would be appropriate in light of the facts, *e.g.*, where it is shown that a station outside the DMA has a reportable audience share equal to, or higher than, one or more stations in the DMA.

Respectfully submitted,

CLEAR CHANNEL COMMUNICATIONS, INC.

By: ______________________________
Kenneth Wyker
Senior Vice President

Dated: October 15, 1999